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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 MARCUS D. CALDWELL,  
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Petitioner,

vs.

MATTHEW CATE, Secretary,  
Respondent.

CASE NO. 11cv2885-MMA (DHB)

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE;**

[Doc. No. 10]

**OVERRULING PETITIONER'S  
OBJECTIONS;**

[Doc. No. 11]

**DENYING PETITION FOR WRIT OF  
HABEAS CORPUS**

Petitioner Marcus D. Caldwell, a state prisoner proceeding *pro se*, filed a First Amended Petition for Writ of Habeas Corpus pursuant to Title 28 of the United States Code, section 2254, challenging the state trial court's sentencing of Petitioner to a stipulated term of six years for one count of sale of cocaine base in violation of California Health & Safety Code § 11352(a) and one strike prior under California Penal Code § 667(b)-(I). *See* Doc. No. 4. Respondent filed an Answer to the First Amended Petition, contending the petition should be denied on both procedural and substantive grounds. *See* Doc. No. 6. Plaintiff filed a Traverse in response. *See* Doc. No. 8. The matter was referred to United States Magistrate Judge David H. Bartick for preparation of a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), and Civil Local

1 Rule HC.2. Judge Bartick has issued a well-reasoned and thorough Report recommending that the  
2 petition be denied as it is without merit. *See* Doc. No. 10.

3 Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), the  
4 Court must “make a *de novo* determination of those portions of the report . . . to which objection is  
5 made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations  
6 made by the magistrate [judge].” 28 U.S.C. § 636(b) (1); *see also United States v. Remsing*, 874  
7 F.2d 614, 617 (9th Cir. 1989).

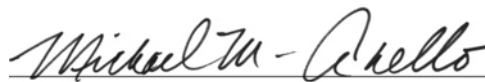
8 Having considered Petitioner’s objections and conducted a *de novo* review of the pertinent  
9 portions of the record, the Court concludes that Judge Bartick issued an accurate report and well-  
10 reasoned recommendation that the instant petition be denied as lacking merit.

11 Accordingly, **IT IS HEREBY ORDERED THAT:**

- 12 1. The Report and Recommendation is **ADOPTED** in its entirety.
- 13 2. Petitioner’s First Amended Petition for Writ of Habeas Corpus is **DENIED**.
- 14 3. The Clerk of Court shall terminate this case and enter judgment in favor of  
15 Respondent.

16 **IT IS SO ORDERED.**

17 DATED: September 18, 2012



Hon. Michael M. Anello  
United States District Judge